

MANLEY HOT SPRINGS COMMUNITY ASSOCIATION

IBLA 83-972

Decided May 4, 1984

Appeal from decision of Alaska State Office, Bureau of Land Management, approving for interim conveyance lands proper for village selection under applications F 14891-A and F 14891-B.

Affirmed.

1. Alaska Native Claims Settlement Act: Administrative Procedure:
Decision to Issue Conveyance--Alaska Native Claims Settlement Act:
Conveyances: Generally

A claim of prior use of public lands does not preclude the selection and conveyance of the lands in accordance with the Alaska Native Claims Settlement Act, and a decision of the Bureau of Land Management to convey the public lands will be upheld against such a claim.

2. Alaska Native Claims Settlement Act: Conveyances: Valid Existing Rights: Generally

In accordance with sec. 14 of the Alaska Native Claims Settlement Act, the Bureau of Land Management's conveyances of public lands to a village corporation are made subject to valid existing rights in the lands, including rights of access.

3. Alaska Native Claims Settlement Act: Administrative Procedure:
Generally--Alaska Native Claims Settlement Act: Appeals:
Generally--Alaska Native Claims Settlement Act: Conveyances: Valid Existing Rights: Generally

Prior to the conveyance of public lands subject to valid existing rights not leading to acquisition of title, but recognized under the Alaska Native Claims Settlement Act, there is no basis for an administrative appeal to enforce the valid existing rights claimed.

4. Alaska Native Claims Settlement Act: Easements: Public Easements

The Department's authority to reserve public easements across lands conveyed to a village corporation under the Alaska Native Claims Settlement Act is limited to providing access to lands not selected for conveyance.

APPEARANCES: Board of Directors of Manley Hot Springs Community Association, Manley Hot Springs, Alaska; Verniel M. Gentleman, vice president/land manager, for Bean Ridge Corporation; James Q. Mery, Esq., Fairbanks, Alaska, for Doyon, Limited; Bruce E. Schultheis, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

This appeal is from a decision of the Bureau of Land Management (BLM) to convey certain lands to a village corporation pursuant to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §§ 1601-1628 (1976 and Supp. V 1981). By its decision of August 5, 1983, the Alaska State Office, BLM, approved for interim conveyance to the Bean Ridge Corporation the surface estate of lands found proper for selection by that village corporation under ANCSA. Under BLM's decision the subsurface estate of the approved lands is reserved to Doyon, Limited (Doyon), a Native regional corporation.

On September 2, 1983, Manley Hot Springs Community Association (Manley) appealed the approval of the village selections as to lots 24 and 26, tract C of U.S. Survey 3441. Manley states that lot 24 is the community cemetery and lot 26 "represents the only viable access" to the cemetery.

BLM and Doyon have appeared in the appeal and filed motions to dismiss, asserting that Manley does not have the property interest required under 43 CFR 4.410 to maintain the appeal. 1/ The Board hereby denies these motions.

[1] The interest Manley has asserted in lot 24 is based on its long-standing use of this land as a cemetery. From the record it appears that BLM recognized this use as early as 1960, at least as a matter of permission:

The cemetery has been surveyed as Lot 24, U.S. Survey 3441, and both the tract book and the plat have been so noted. That lot is, therefore, segregated and not available for filing. It is, in effect, a small piece of public domain dedicated for use as a cemetery. Should Manley Hot Springs ever become incorporated, it may make application for Lot 24, but only for continued cemetery use.

Letter of October 24, 1960, from Robert J. Coffman, Lands and Minerals Officer, Fairbanks Operations Office, BLM, to Gus Benson of Manley Hot Springs. 2/

1/ This regulation provides:

"(b) For decisions rendered by Departmental officials relating to land selections under the Alaska Native Claims Settlement Act, as amended, any party who claims a property interest in land affected by the decision, an agency of the Federal Government or a regional corporation shall have a right to appeal to the Board."

2/ Presumably BLM based its reference to the possibility of the acquisition of lot 24 for cemetery purposes on the provisions of the Act of June 4, 1954, commonly known as the Recreation and Public Purposes Act (R&PP Act), which amended the Recreational Purposes Act of June 14, 1926, 44 Stat. 741, to include the granting of interests in public land for "public purposes" within the purview of that Act. The R&PP Act permits the sale of public land for use as a cemetery only to incorporated cities or towns.

The residents of Manley Hot Springs never incorporated the village, which would have afforded them an opportunity to purchase lot 24 from the Federal Government, and their historical and continuing use of the land does not support any claim of title to the land. ^{3/} Thus, while the residents of Manley may have some interest in lot 24, the nature of this interest is not such that it would preclude BLM's conveyance of that land to the Bean Ridge Corporation. See 43 U.S.C. §§ 1610(a), 1611, and 1613. This is not to say, however, that the conveyance to Bean Ridge Corporation will extinguish any right to use the cemetery which may now be held by the residents of Manley Hot Springs.

[2, 3] In accordance with section 14(g) of ANCSA, 43 U.S.C. § 1613(g), BLM's conveyances to the village corporation will be made subject to valid existing rights, including rights of access. Also, each patent issued will be subject to the requirements of section 14(c), 43 U.S.C. § 1613(c), including:

(3) * * * [T]he Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs * * *.
[Emphasis added.]

Thus, any rights to use lot 24 for cemetery purposes that the members of Manley now possess, as well as the opportunity to form a municipal corporation that may acquire ownership of the lot, will be protected under the terms of the conveyances to the Bean Ridge Corporation. ^{4/} The Board cannot afford

^{3/} Appellant has not raised any claim of ownership of lot 24 based on its use of the land; nor could any such claim be recognized against the Federal Government. See, e.g., Manley Rustin, 28 IBLA 205, 83 I.D. 617 (1976). Moreover, the Board has before it no instrument under which Manley might claim title to this land pursuant to the Color of Title Act, 45 Stat. 1069, as amended, 43 U.S.C. § 1608 (1976).

^{4/} Manley has asserted that: "Once the Lots have been patented the community feels that negotiation for these Lots into the Municipal Trust Lands program under the requirements of Section 14(c) of [ANCSA] might not be feasible since [Bean Ridge Corporation has] the patent right of disposal." As should be clear from the text, supra, any patent issued to the Native corporation will be subject to the requirements of section 14(c) of ANCSA. Moreover, it appears from the record that the Bean Ridge Corporation stands ready to convey lot 24 to the State in trust for a municipal corporation that might be formed by residents of Manley Hot Springs. See letter of Oct. 24, 1983, from Verniel M. Gentleman, vice president/land manager, Bean Ridge Corporation, to the Interior Board of Land Appeals (wherein Mr. Gentleman states: "Bean Ridge had NEVER, EVER intended to retain ownership of lot 24."). We need not inquire whether, under State law, the community of Manley Hot Springs may qualify for incorporation.

Manley any more protection of its asserted interest in lot 24 than that to be provided under section 14 of ANCSA. As there can be no assertion prior to the conveyance of lot 24 that the Bean Ridge Corporation has failed to act in accordance with the terms of the conveyance, Manley's appeal does not present any controversy concerning lot 24 to be resolved by this Board. E.g., George Fredericks, 73 IBLA 344 (1983).

[4] Manley also seeks by this appeal recognition of an easement along the east boundary of lot 26 to ensure continued access from the Manley Hot Springs slough to the cemetery. Manley notes that the easement also would provide access to village corporation lands and potential municipal trust lands above U.S. Survey 3441, as well as an area for installation of utility services.

While Manley has not expressly stated so, the Board gathers from the statement in support of its appeal that Manley seeks the Department's reservation of a public easement across lot 26. 5/ The Board cannot direct BLM to accommodate this request in the conveyance to Bean Ridge Corporation.

The Department's authority to reserve public easements across lands conveyed to village corporations under ANCSA is set forth in section 17 of the Act, 43 U.S.C. § 1616. That authority has been recognized, both in judicial and administrative decisions, to be limited to providing access to public lands not selected for conveyance to a village corporation. Alaska Public Easement Defense Fund v. Andrus, 435 F. Supp. 664 (1977); Henry W. Waterfield, 77 IBLA 270 (1983). Because Manley has presented no reason for the exclusion of lot 24 from the conveyances to Bean Ridge Corporation, there is no basis presented in this appeal on which to invoke the Department's authority under section 17 of ANCSA.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State Office, BLM, dated August 5, 1983, approving the interim conveyance of land to the Bean Ridge Corporation is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

James L. Burski
Administrative Judge

5/ To the extent that Manley merely seeks recognition of any present right of access across lot 26, that protection can only be afforded in accordance with section 14 of ANCSA, as is explained in the Board's discussion of lot 24.

